

AMENDED IN SENATE APRIL 27, 2006

AMENDED IN SENATE APRIL 5, 2006

SENATE BILL

No. 1387

Introduced by Senator Poochigian

February 21, 2006

An act to amend Section 530.5 of, and to add ~~Sections 540, 541,~~
~~and 1203.051~~ *Section 540* to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1387, as amended, Poochigian. Personal identifying information.

Existing law defines personal identifying information and provides that every person who willfully obtains personal identifying information about another person, and uses that information for any unlawful purpose is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000, or both, or by imprisonment in the state prison, or a fine not to exceed \$10,000, or both. Existing law also provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined, of another person, is guilty of a crime punishable by imprisonment in the county jail not exceeding one year, a fine not exceeding \$1,000, or by both that fine and imprisonment.

This bill would specify that, for purposes of these provisions, "person" includes natural persons living and deceased, and organizations, associations, business relationships and other legal entities, expand the definition of "personal identifying information" to include any identifying information that uniquely describes a person, and make other conforming changes. This bill would instead provide

that every person who, with intent to defraud, acquires, retains possession of, sells, transfers, or conveys, the personal information of another is punishable, based upon the number of persons from whom personal identifying information was taken, by fine and imprisonment in a county jail or imprisonment in the state prison, as specified.

Because this bill would expand the definition of existing crimes and create new crimes, this bill would impose a state-mandated local program.

~~This bill would provide that every person convicted of a felony violation of, or conspiracy to violate, these provisions is punishable by an additional 2-year term of imprisonment in the state prison for each prior felony conviction of, or conviction of conspiracy to violate, specified provisions. This bill would also provide that every person who commits a felony violation of these provisions with respect the personal identifying information of a person who is less than 18 years of age, is an elder or dependent adult, or who is a person engaged in services in the uniformed services, is punishable by an additional one year term of imprisonment in the state prison.~~

~~Because this bill would increase the prosecutorial duties of local officials, this bill would create a state-mandated local program.~~

~~Existing law establishes a program of financial and technical assistance for law enforcement and district attorneys' offices, designated the High Technology Theft Apprehension and Prosecution Program.~~

~~This bill would provide that in addition to any other fine, restitution fine, or other restitution, a forensic computer analysis fee of \$250 shall be paid by persons convicted of specified offenses and any person ordered by the court to do so if the court finds that the person committed a high-technology related offense primarily through the use of a computer. This bill would also provide that county treasurers shall maintain forensic computer analysis funds into which these fines shall be deposited to be used, less administrative costs, to fund costs incurred by computer forensic analysis, equipment, and education and training.~~

~~Existing law provides that probation shall not be granted nor shall the execution or imposition of sentence be suspended for persons who have committed specified violations of law.~~

~~This bill would provide that probation shall not be granted nor shall the execution or imposition of sentence be suspended for a person who has been convicted of a felony violation of provisions relating to~~

~~personal identifying information if he or she has a prior felony conviction for a violation of those provisions.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 530.5 of the Penal Code is amended to
2 read:

3 530.5. (a) Every person who willfully obtains personal
4 identifying information, as defined in subdivision (b) of Section
5 540, of another person, and uses that information for any
6 unlawful purpose, including to obtain, or attempt to obtain,
7 credit, goods, services, real property, or medical information
8 without the consent of that person, is guilty of a public offense,
9 and upon conviction therefor, shall be punished either by
10 imprisonment in a county jail not to exceed one year, a fine not
11 to exceed one thousand dollars (\$1,000), or both that
12 imprisonment and fine, or by imprisonment in the state prison, a
13 fine not to exceed ten thousand dollars (\$10,000), or both that
14 imprisonment and fine.

15 (b) In any case in which a person willfully obtains personal
16 identifying information of another person, uses that information
17 to commit a crime in addition to a violation of subdivision (a),
18 and is convicted of that crime, the court records shall reflect that
19 the person whose identity was falsely used to commit the crime
20 did not commit the crime.

21 (c) (1) Every person who, with the intent to defraud, acquires,
22 transfers, conveys, or retains possession of the personal
23 identifying information, as defined in subdivision (b) of Section
24 540, of another person is guilty of a public offense, and upon
25 conviction therefor, ~~shall be punished as follows:~~

26 ~~(1) If the personal identifying information is from fewer than~~
27 ~~10 persons, by a fine not to exceed one thousand dollars (\$1,000)~~

1 for each person and, imprisonment in a county jail not to exceed
2 one year, or imprisonment in the state prison for 16 months, or
3 two or three years.

4 (2) If the personal identifying information is from at least 10
5 persons, but fewer than 50 persons, by a fine not to exceed one
6 thousand dollars (\$1,000) for each person and imprisonment in
7 the state prison for 16 months, or two or three years.

8 (3) If the personal identifying information is from at least 50
9 persons, but fewer than 500 persons, by a fine not to exceed one
10 thousand dollars (\$1,000) for each person and imprisonment in
11 the state prison for two, three, or five years.

12 (4) If the personal identifying information is from 500 or more
13 persons, by a fine not to exceed one thousand dollars (\$1,000) for
14 each person and imprisonment in the state prison for three, five,
15 or seven years.

16 (d) Every person convicted of a felony violation of, or
17 conspiracy to violate, this section shall receive, in addition to any
18 other punishment authorized by law, including Section 667.5, a
19 full, separate, and consecutive term of imprisonment in the state
20 prison for two years for each prior conviction of a felony
21 violation of this section or Section 470, 470a, 470b, 472, 484e,
22 484f, 484g, 484i, 487, 496, 529, 530.55, or 532, including any
23 conviction for conspiracy to violate the listed sections. It is not
24 required that the prior conviction resulted in a term of
25 imprisonment.

26 (e) Every person who commits a felony violation of this
27 section shall receive, in addition to any other punishment
28 authorized by law, a full, separate, and consecutive term of
29 imprisonment in the state prison for one year for each violation,
30 if either of the following circumstances apply:

31 (1) The crime was committed against a person under 18 years
32 of age or an elder or dependent adult, as defined in subdivisions
33 (g) and (h) of Section 368, and the victim's age was known or
34 should have been known to the person.

35 (2) The crime was committed against a person engaged in the
36 uniformed services, as defined in subdivision (c) of Section
37 28000 of the Education Code, and the victim's service was
38 known or should have been known to the person.

39 (f) The enhancements provided in this section shall be pleaded
40 and proven as provided by law.

1 ~~(g) A prior conviction from another jurisdiction for an offense~~
2 ~~that, if committed in California would be an offense under this~~
3 ~~section, shall qualify as a prior conviction for the purposes of~~
4 ~~applying the sentence enhancements provided by this section.~~
5 ~~shall be punished by a fine not to exceed one thousand dollars~~
6 ~~(\$1,000), imprisonment in a county jail not to exceed one year, or~~
7 ~~by both that fine and imprisonment.~~

8 (2) Every person who, with the intent to defraud, acquires,
9 transfers, conveys, or retains possession of the personal
10 identifying information, as defined in subdivision (b) of Section
11 540, of at least 5 persons, is punishable by a fine not to exceed
12 one thousand dollars (\$1,000), imprisonment in a county jail not
13 to exceed one year, or by both that fine and imprisonment, or by
14 a fine not to exceed ten thousand dollars, imprisonment in the
15 state prison for 16 months, or two or three years, or by both that
16 fine and imprisonment.

17 ~~(h)~~

18 (d) Notwithstanding any other provisions of law, nothing shall
19 prohibit a person who believes that he or she possesses personal
20 identifying information as defined in subdivision (b) of Section
21 540, that has been unlawfully used by another, from disclosing
22 the personal identifying information and related records when:

23 (1) The disclosure is necessary to report to law enforcement
24 the commission of a crime.

25 (2) The disclosure is required by law enforcement for the
26 purpose of investigating a violation of this chapter.

27 (3) The disclosure is requested by a victim.

28 ~~(i)~~

29 (e) Nothing in this section shall require disclosure of personal
30 identifying information in accordance with subdivision~~(h)~~ (d).
31 No disclosure pursuant to subdivision~~(h)~~ (d) shall affect any
32 existing civil immunity provision as provided for in Section 47 of
33 the Civil Code or any other provision of law.

34 SEC. 2. Section 540 is added to the Penal Code, to read:

35 540. (a) For purposes of this chapter, “person” means a
36 natural person, living or deceased, firm, association,
37 organization, partnership, business trust, company, corporation,
38 limited liability company, or public entity, or any other legal
39 entity.

(b) For purposes of this chapter, “personal identifying information” means either of the following:

(1) Any name or number that may be used alone, or in conjunction with any other information, to identify a specific individual person, by name, address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver’s license, or identification number, social security number, place of employment, employee identification number, professional or occupational number, mother’s maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voice print, retina or iris image, or other unique physical representation, unique electronic data including information identification number assigned to the person, address or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person.

(2) Any other identifying information that uniquely describes a person.

~~SEC. 3. Section 541 is added to the Penal Code, to read:~~

~~541. (a) In addition to any other fine, restitution fine, or other restitution, the following persons shall be required to pay a forensic computer laboratory analysis fee in the amount of two hundred and fifty dollars (\$250):~~

~~(1) Every person who is convicted of a violation of Section 484e, 484f, 484g, 484i, 487, 496, 529, 530.5, 530.55, or 532.~~

~~(2) Any person ordered by any court for any offense not included specifically in this section if the court finds at the time of conviction or sentencing that the person committed a high-technology related offense primarily through the use of a computer. The court shall state on the record the reasons for its findings and the reasons for requiring the laboratory fee.~~

~~(b) The county treasurer shall maintain a forensic computer analysis fund. The sum of two hundred fifty dollars (\$250) shall be deposited into the fund for every conviction listed in subdivision (a) of this section. The county may retain an amount of this money equal to its administrative cost incurred pursuant to~~

1 ~~this section not to exceed 5 percent. Moneys in the forensic~~
2 ~~computer analysis fund shall be used exclusively to fund:~~

3 ~~(1) Costs incurred by forensic laboratories providing computer~~
4 ~~forensic analysis or other analysis of electronic or computer~~
5 ~~evidence in connection with criminal investigations conducted~~
6 ~~with both the incorporated and unincorporated portions of the~~
7 ~~county.~~

8 ~~(2) The purchase and maintenance of equipment for use by~~
9 ~~these laboratories in performing the analysis.~~

10 ~~(3) Continuing education, training, and development of~~
11 ~~computer forensic analysis for analysis regularly employed by~~
12 ~~these laboratories.~~

13 ~~Moneys in the forensic computer analysis fund shall be in~~
14 ~~addition to any allocations pursuant to existing law.~~

15 ~~(e) As used in this section, “forensic laboratory” means a~~
16 ~~laboratory operated by or under contract with a city, county, or~~
17 ~~other public agency, including a forensic laboratory of the~~
18 ~~Department of Justice.~~

19 ~~SEC. 4. Section 1203.051 is added to the Penal Code, to read:~~

20 ~~1203.051. (a) Except in unusual cases in which the interests~~
21 ~~of justice would be best served if the person is granted probation,~~
22 ~~probation shall not be granted to any person convicted of a felony~~
23 ~~violation of Section 530.5 who has one or more previous felony~~
24 ~~convictions for a violation of that section.~~

25 ~~(b) If probation is granted, the court shall specify on the record~~
26 ~~and shall enter in the minutes the circumstances indicating that~~
27 ~~the interests of justice would be best served by the disposition.~~

28 ~~SEC. 5.~~

29 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
30 ~~Section 6 of Article XIII B of the California Constitution because~~
31 ~~the only costs that may be incurred by a local agency or school~~
32 ~~district will be incurred because this act creates a new crime or~~
33 ~~infraction, eliminates a crime or infraction, or changes the~~
34 ~~penalty for a crime or infraction, within the meaning of Section~~
35 ~~17556 of the Government Code, or changes the definition of a~~
36 ~~crime within the meaning of Section 6 of Article XIII B of the~~
37 ~~California Constitution.~~